MEMBERS CHARGED WITH CIVILIAN CRIMES

Lt Col Karen Hornsby

"WHAT'S A COMMANDER TO DO?"

- Contact civil authorities and gather information
- Address detention & bond issues
- Contact the member
- Consider action while case is pending
- Discuss appropriate action at conclusion of case

CONTACT CIVIL AUTHORITIES

- Identify self and purpose of call
- Obtain police reports, arrest warrant, indictment or presentment, & any other documentation
- Determine what charges are/will be filed, and the maximum punishment available for such offenses
  - Is the offense a “serious offense” possibly warranting administrative discharge action?
  - A “serious offense” is one punishable by a BCD or DD if prosecuted under the UCMJ, or which actually results in confinement for a year or more (i.e. a felony)

DETENTION & BOND ISSUES

- May request the member's return to military control, but do *not* guarantee the member's presence at any subsequent court hearings
- Do *not* post bond or personally guarantee any action by the member. Do *not* involve the ANG in any decision to post bond.
- If overseas, check applicable Status of Forces Agreements or bilateral treaties through the onsite SJA

CONTACT THE MEMBER

- Advise member of his/her constitutional rights
- Do not coerce the member into telling you about their alleged involvement in the civilian crime. Statements must be voluntary.
- Advise the member that if convicted of a civilian crime, or action is taken which is tantamount to a finding of guilt, he/she could be discharged from the ANG.

POSSIBLE ACTION WHILE CASE IS PENDING

- Quality Force Management Actions
- Limitations on Training
- Discharge Action

POSSIBLE ACTIONS WHILE CASE IS PENDING, cont.

- Permissible Quality Force Management Actions
  - Witholding promotion action
  - OPR comments
  - Denial of Reenlistment

POSSIBLE ACTIONS WHILE CASE IS PENDING, cont.

- Limitations on Training
  - Consider the nature of the charges and the potential effect on morale at the base if limitations are/are not imposed
  - May cancel school orders
  - May cancel scheduled deployment
  - DRILLS??????????

POSSIBLE ACTIONS WHILE CASE IS PENDING, cont.

- Discharge Action
  - Normally a defendant is presumed innocent until proven guilty
  - Wait until final disposition of case in civilian court before taking any discharge action
  - Under some circumstances, discharge action may be appropriate even before case is concluded
  - If defendant is later exonerated, may be required to “undo” any action that, in hindsight, was unfairly taken

ACTIONS AT CONCLUSION OF CIVILIAN CASE

- Obtain a certified copy of the final disposition, whether the member is convicted or exonerated.

- If member was convicted, or received a disposition that was the equivalent to a finding of guilty (e.g. nolo contendere plea, pretrial diversion), consider discharge action under AFI 36-3209 for civilian conviction or misconduct.

COMMON PITFALLS

- Failure to obtain paperwork from civilian authorities
- Failure to read member rights when interviewed
- Failure to consult legal office before tking or not taking action

QUESTIONS/COMMENTS / CONFUSION?